

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.395 of 1979

Savitri Devi & Ors. Claimants/Appellants
Versus
State Of Bihar Opposite Party/Respondent

With

First Appeal No. 396 of 1979

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Savitri Devi & Ors. Claimants/Appellants
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State Of Bihar Opposite Party/Respondent

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Both the Appeals are against the common judgment and award dated 03.02.1979 passed by Sri Ram Charitra Sathi, Additional Subordinate Judge III-cum-Land Acquisition Judge, Begusarai in L.A. Case No.54 of 1961/37/24 of 1978 and L.A. Case No.51 of 1961/34/21 of 1978.

For the appellants : (in both the appeals)	Mr. Pramod Kumar Sinha, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Madhukar Narayan Sinha, Advocate Mr. Rakesh Kumar Sinha, Advocate
For the respondent : (in both the appeals)	Mr. J.S. Arora, S.C. 6 Mr. Ajay Kumar, A.C. to S.C. 6 Mr. Anjani Kumar, Advocate Mr. Sanjay, A.C. to A.G. 10 Mr. K.N.Gupta, Advocate

Dated : 12th day of August, 2011

P R E S E N T**THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO****J U D G M E N T****Mungeshwar
Sahoo, J.**

Both the above First Appeals are directed against the common judgment and award dated 03.02.1979 passed by Sri Ram Charitra Sathi, Additional Sub Judge III-cum-Land Acquisition Judge, Begusarai in L.A. Case No.54 of 1961/37/24 of 1978 and L.A. Case No.51 of 1961/34/21 of 1978.

(2) The appeal has been filed by the land owner, claimants. Both the land acquisition cases referred to above were heard together along with other land acquisition cases and disposed of by the impugned common judgment and award. The claimants filed two First Appeals. Therefore, both the appeals are heard together and are disposed of by common judgment.

(3) It appears that for the purpose of township at Begusarai for Indian Refinery, Barauni about 123 acres of land were acquired. Regarding 71.375 acres, notification under Section 4 of the L.A. Act was issued on 17.05.1960 whereas for an area of 51.643 acres, notification under Section 4 of the L.A. Act was issued on 21.06.1960 and subsequently again on 19.09.1960. Out of the said large chunk of land in First Appeal No.395 of 1979 arising out of L.A. Case No.54 of 1961, the appellant's land involved is only 0.43 acre. The Collector awarded compensation of Rs.2559.04. In First Appeal No.396 of 1979, 11.595 acres land of appellant was acquired and the Collector awarded

compensation of Rs.70,142.73. The appellants received the amount on protest and filed application under Section 18 of the Land Acquisition Act claiming enhancement of the compensation at the rate of Rs.10,000 per bigha. According to the appellant's case, the acquired lands were very productive, most fertile and cash producing crops land. The possessions of the said land have already been taken by the State Govt. on 14.05.1960. The rate of compensation assessed by the Collector is arbitrary and very low. The lands were productive and were situated by the side of road and were very nearer to Begusarai progressing town but the Collector did not consider the future utility and potential of the lands acquired. The land was first class land and Chillis, Sugarcane and other valuable crops were being grown. The lands in the vicinity of the acquired lands were being sold at Rs.10,000 per bigha and, therefore, prayer was made for making reference.

(4) After reference, the State of Bihar filed objection stating that in fact the lands were not fertile and that only Well was there for irrigation and that the lands are purely agricultural land, are away from the township and that the lands were not situated by the side of the road. The Collector has given proper compensation for the acquired land.

(5) Both the parties have adduced oral as well as documentary evidences in the Court below. The claimants-appellants examined as many as 12 witnesses. 5 witnesses were examined by the State of Bihar. The claimants produced 6 sale deeds i.e. Exhibit-1 series in support of his claim about the prevalent market value of the lands acquired. The State of Bihar also produced Exhibit-A series, the

Schedule of trees and Exhibit-B series, four Khesra Registers of the acquired land and Exhibit-C and C/1, enquiry reports with sale rate statements.

(6) After trial, the learned Court below came to the conclusion that oral evidences adduced by the claimants-appellants are not reliable because their statements are exaggerated. The learned Court below also observed that for determining the prevalent market value of the land, the oral evidence cannot be made the basis. The best evidence is to see the sale instances of similar land. However, the learned Court below relied upon the sale deeds also because those sale deeds were related to very very small area and that the nature of the lands were not similar with the nature of the present land acquired. The learned Court below also did not rely upon the Pleader Commissioner's report regarding the situation of the land. The learned Court below relied upon the evidences of the O.P.Ws. and the sale statements and came to the conclusion that the appellants have failed to prove that the acquired land were capable of fetching more price than the compensation awarded by the Collector and accordingly, dismissed the land reference cases.

(7) Mr. Pramod Kumar Sinha, the learned counsel appearing on behalf of the appellants submitted that the amount of compensation awarded by the Collector regarding 43 decimals is very low. The appellants claimed Rs.3740.96 whereas for 11 and odd acres, the claimants-appellants is claiming Rs.1,75,000 which has been refused by the Land Acquisition Judge. According to the learned counsel, learned Court below should have relied upon at least Exhibit-1/D, the

sale deed dated 25.01.1960 and Exhibit-1/E dated 16.06.1959 but the learned Court below wrongly discarded the said sale deeds also. The learned counsel further submitted that the learned Court below should have taken into consideration the fact that the lands were very near to the town and very fertile lands. The Pleader Commissioner was appointed by the Court and the Pleader Commissioner submitted the report. No objection was filed by the State of Bihar to the Commissioner's report but the learned Court below wrongly held that the report cannot be relied upon because the Pleader Commissioner has not been examined as witness. On these grounds, the learned counsel for the appellants prayed that the appeals be allowed and the compensation be enhanced as claimed by the appellants.

(8) On the other hand, the learned counsel, Mr. J.S. Arora, S.C. 6 submitted that the learned Court below has rightly not relied upon the oral evidences as well the sale deeds of the appellant because on the basis of oral evidence, the market value could not have been determined. So far sale deeds are concerned, those sale deeds are related to only 1 katha or 1 katha 10 dhurs etc. According to the learned counsel when more than 100 acres of land were acquired, the prevalent market value of 100 and more acres of land cannot be fixed on the basis of sale deeds involving very very small area of land and, therefore, the learned Court below has rightly not relied upon the said sale deeds. The learned counsel further submitted that the burden is on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate. The learned counsel further submitted that none of the lands involved

in the sale deeds were of similar nature as that of the acquired land and they were not situated in the vicinity of the acquired land and moreover, it appears that the nature of the lands sold in the sale deeds were homestead land and, therefore, the sale deeds cannot be made basis for determining the market value of the land. On the aforesaid grounds, the learned counsel submitted that the appeals are liable to be dismissed as the appellants have failed to prove the fact that the compensation awarded by the Collector is inadequate.

(9) In view of the above contentions of the counsels for the parties, the points arise for consideration in these appeals are as to "whether the compensation awarded by the Land Acquisition Officer is correct, just and proper compensation for the lands acquired" and "whether the impugned judgment and award are sustainable in the eye of law?"

(10) The witnesses examined on behalf of the appellants have stated that the acquired lands were very productive and that there was irrigation facilities and in the vicinity of the lands acquired, the lands were sold at Rs.10,000 per bigha at the time of acquisition. The witnesses have also stated about the production of the crops of the acquired land. It is well settled principles of law that on the basis of oral evidence, the market value of the lands acquired cannot be determined and should not be determined. The learned Court below has observed that the witnesses examined by the claimants are either related or bataidar or of the same village who have come to help the appellant. On the other hand, the O.P.W.3, the then Land Acquisition Officer has stated that he had inspected and made enquiry regarding

the land acquired and had prepared the sale figures from the Registration office and compared the same. He has proved Exhibit-C which is the report. In the report, it is mentioned that the claimants had got private arrangement of irrigation. This witness has also stated that he enquired and obtained prevalent rate of grains from the Begusarai market and on the basis of all these facts and circumstances, he made the report, Exhibit-C. O.P.W.4 is another Land Acquisition Officer who has acquired the lands in acquisition. He has proved his rate report which has been marked as Exhibit-C/1. He has stated that he examined the sale figures of the year 1959-1960 and according to him, except one plot, the other lands were homestead land in the sale deeds. The other witnesses are formal witnesses.

(11) From the above discussion of the evidences, it appears that the learned Court below has rightly held that the witnesses examined on behalf of the appellants are making exaggerated statements regarding the value either of the land or the grains with a view to obtain higher compensation. The learned Court below relied upon the evidences of the Land Acquisition Officers i.e. O.P.W.3 and O.P.W.4.

(12) The learned counsel for the appellants submitted that the learned Court below should have relied upon Exhibit-1/D and 1/E. So far this submission is concerned, it appears that Exhibit-1/D is sale deed dated 25.01.1960 whereby 1 katha land was sold for Rs.500 and Exhibit-1/E is sale deed dated 16.06.1959 whereby 1 katha 10 dhurs land was sold for Rs.625. Admittedly, the lands sold were homestead

lands. In the present case, it is admitted fact that the lands acquired were purely agricultural land and according to O.P.W.3, the appellants themselves have arranged for irrigation.

(13) The learned counsel for the appellants relied upon a decision reported in **(1998)2 Supreme Court Cases 385(Land Acquisition Officer Revenue Divisional Officer vs. L. Kamalamma)** wherein the Hon'ble Supreme Court has held that when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of lands by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites. So far the decision laid down by the Apex Court is concerned, there is no dispute about the said principle. In the present case, the nature of the land sold in Exhibit-1/D and 1/E are not the agricultural land. Here more than 120 acres of land has been acquired. So far the sale deeds are concerned, this involved only 1 katha. Therefore, now, even accepting the argument of the learned counsel for the appellant, if these sale deeds will be taken into consideration, then in such circumstances, deduction is to be made firstly for the purpose of making the lands sold comparable with the lands acquired and secondly, for the purpose of development etc. as indicated by the Apex Court in my opinion, 60% of the sale consideration is required to be deducted. If the said amount is deducted, then the rate of 1 katha

comes near to Rs.200. Now, on the basis of this rate, if it is calculated, then for the lands measuring 0.43 decimal, the compensation will be less than Rs.2,000 and likewise, the compensation for 11 acres and odd, the compensation will be less than Rs.60,000. In the present case, the Collector has awarded more than the above compensation.

(14) We have seen from the evidence of O.P.W.3 and O.P.W.4 that inspection was made prior to 1960 i.e. 1959. It means that the scheme was announced prior to 1959 for acquisition of lands.

(15) In the case of **State of U.P. and others Vs. Ram Kumari Devi (Smt.) and others 1996 (8) SCC 577**, the Hon'ble Supreme Court has held at paragraph 4 as follows :

"4. It is seen that small pieces of land of an extent of 60' x 20', 40' x 40' and 1600 sq. ft. were sold by the claimants, obviously on coming to know of the proposed acquisition. It is common knowledge that acquisition proposal would be made at an earlier point of time and finalisation of acquisition would take a long time. In the process, on becoming aware of the acquisition, obviously, these sale deeds have been brought into existence to inflate the market value. It is laid down by this Court which is a well-settled principle that it is the duty of the court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adduction of evidence by the parties, the acid test which the court has to adopt is that the court has to sit in the armchair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the court is intending to fix the market value in respect of the acquired land. Since it is a compulsory acquisition, it is but the solemn duty of

the court to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also to avoid needless burden on public exchequer. No feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no prudent man would have credulity to purchase that land on square foot basis. The High Court as well as the District Judge have committed a grave error in not applying the above acid test while considering the case. They merely proceeded by accepting the sale deeds which were obviously brought into existence to inflate the market value and determined the compensation on the price settled by them. Thus, we hold that both the courts have applied a wrong principle of law in determining the compensation."

(16) In 1996 (3) SCC 766 **Hookiyar Singh and others Vs. Special Land Acquisition Officer, Moradabad and another** the Hon'ble Supreme Court has held that it is settled law that the burden of proof of market value prevailing as on the date of publication of notification under Section 4(1) of the L.A. Act is always on the claimants. The Hon'ble Supreme Court has also held that though the Apathy and Blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of counsel for the State to examine the witnesses, on material facts it is the duty of the court to carefully scrutinize the evidence and determine just and adequate compensation. All these decisions of the Hon'ble Supreme Court clearly speaks that it is the burden of the claimants to satisfy the Court that the compensation awarded by the Land Acquisition Officer is inadequate.

(17) **In the case of G. Narayan vs. Land Acquisition Officer 1996(10) S.C.C. 607**, it has been held by the Apex Court that it must be established as a fact that the potential purpose does exist on the date of notification, the prevalent condition in the market, the existence of the construction of building activities in the neighbourhood and that other lands in the adjacent neighbourhood possessed similar condition. In the present case, there is no such evidence. The witnesses have stated that the land is very near to the town. According to the O.P.W.3, the land acquired is 3 kilometers away from the town and is purely agricultural land.

(18) In the case of **Ahamdabad Municipal Corporation Vs. Sharda Ben and others 1996 (8) SCC 93** the Hon'ble Supreme Court has held that the burden is on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the Court to closely scrutinize the evidence, apply the test of prudent and willing purchaser i.e. whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation.

As stated above in the present case, this burden has not been discharged by the claimants.

(19) The learned counsel for the appellants next submitted that the Pleader Commissioner's report should have been considered and relied upon by the Court below. So far this submission is

concerned, even if the Pleader Commissioner's report is relied upon, it only speaks about the situation of the land and, therefore, it will not improve the case of the appellant. Moreover, it is the duty of the Court to scrutinize the evidences and fix the prevalent market value of the land and this power cannot be delegated to other. In the present case, the lands have been acquired as far back as in the year 1960. The First Appeal is being heard after 51 years of the acquisition. At such a belated stage, the Court cannot presume that the compensation awarded by the Collector for the lands acquired is inadequate and the said lands would have fetched more prices particularly when the appellants failed to adduce any reliable evidence either documentary or oral. I, therefore, find that the compensation awarded by the Collector is just and proper compensation for the lands acquired and, therefore, the learned Court below has rightly dismissed the reference case. I find no reason to interfere with the findings of the learned Land Acquisition Judge. Accordingly, the finding of the learned Court below is hereby confirmed.

(20) In the result, I find no merit in both the First Appeals and accordingly, both the First Appeals are dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J.)

Patna High Court, Patna
The 12th August, 2011
Saurabh/N.A.F.R.